FILE COPY

Office - Supreme Court, U. S.
FILED
MAY 20 1947
CHARLES ELMORE CROPLEY
CLERK

No. 1044 63

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOSE AUDON SALAZAR DELGADILLO, PETITIONER

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT No. 16

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	12

CITATIONS

Cases:

DiPasquale v. *Karnuth*, 158 F. 2d 878 ..... 5, 6, 7, 8

Taguchi v. *Carr*, 62 F. 2d 307 7

United States ex rel. Claussen v. *Day*, 16 F. 2d 15, 279 U. S. 398 ..... 9, 10

United States ex rel. Stapf v. *Corsi*, 287 U. S. 129 ..... 9, 10, 11

United States ex rel. Volpe v. *Smith*, 289 U. S. 422 ..... 5, 9

Ward v. *De Barros*, 75 F. 2d 24 8

Statutes and Regulations:

Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, as amended:

Sec. 1 2

Sec. 19 (a) 2, 4, 5

8 U. S. C. 136 (p) 11

Immigration Regulations:

8 C. F. R., 1943 Cum. Supp., 132.1 11

8 C. F. R., 1943 Cum. Supp., 175.44 (d) and (e) 11

742961—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1244

JOSE AUDON SALAZAR DELGADILLO, PETITIONER

v.

ALBERT DEL GUERCIO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT NO. 16

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 76–82) is reported at 159 F. 2d 130.

JURISDICTION

The judgment of the circuit court of appeals was entered January 22, 1947 (R. 83). The petition for a writ of certiorari was filed April 14, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner, an alien, shipped on an American merchant vessel bound from Los Angeles, California, to New York via the Panama Canal. He took shore leave at Panama City, Panama. Subsequently the ship was torpedoed, and in consequence petitioner was landed in Cuba and was thereafter brought back to the United States through Miami, Florida. The question presented is whether petitioner's arrival at Miami constituted an "entry" into the United States within the meaning of Section 19 (a) of the Immigration Act of 1917.

STATUTE INVOLVED

The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, as amended by the Act of June 28, 1940, Sec. 20, 54 Stat. 671, provides in pertinent part:

> SEC. 1. [8 U. S. C. 173] * * * the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.
>
> * * * * * *

SEC. 19 (a) [8 U. S. C. 155 (a)] * * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *

STATEMENT

Petitioner, a Mexican citizen, entered the United States in 1922 as an infant in the company of his parents, and resided here continuously until 1942, when he signed on as a member of the crew of the S. S. *Andrew Jackson,* an American merchant ship (R. 15, 23–27, 36). On or about June 13, 1942, the S. S. *Andrew Jackson,* with petitioner aboard, departed from Los Angeles, California, for an intercoastal voyage to New York City. The ship's articles, which petitioner signed, called for an intercoastal voyage. (R. 6, 8a.) En route, before the ship passed through the Panama Canal, it anchored off Panama City, Panama, and petitioner took shore leave in Panama City.[1] After the ship left the Panama Canal on its way to New York, it was torpedoed,

[1] The following testimony was given by petitioner at the deportation hearing (R. 37):

"Q. Did your boat stop at Panama City dock long or didn't you dock there?

"A. Well we anchored outside. We got shore leave at Panama City."

and petitioner, with other survivors, was rescued and taken to Havana, Cuba. About one week later, on July 19, 1942, he was returned to the United States through Miami, Florida. (R. 15, 26, 37.) He was admitted there, in transit, for a period less than 30 days to reship foreign from San Pedro, California (R. 15, 17, 35). On March 27, 1944, petitioner was convicted of robbery in California and sentenced to imprisonment for a term of one year to life (R. 16, 28, 45–48).

While petitioner was confined in the California state prison, proceedings were commenced for his deportation under Section 19 (a) of the Immigration Act of February 5, 1917 (*supra*, pp. 2–3), by reason of his conviction and sentence (in 1944) within five years of his last entry (in 1942) into the United States. At the conclusion of the hearings (R. 19–40), the presiding inspector submitted his report, including a discussion of the evidence and proposed findings of fact and conclusions of law, recommending deportation to Mexico (R. 14–18). The Board of Immigration Appeals thereafter ordered petitioner's deportation (R. 53), and a deportation warrant issued (R. 13–14). On July 6, 1945, petitioner's motion to reopen the deportation proceedings was denied by the Board of Immigration Appeals (R. 54).[2]

On August 27, 1945, petitioner filed a petition

[2] In the courts below, petitioner challenged the fairness of the administrative hearings, but this contention is not renewed here. The propriety of the hearings is treated in the opinion of the court below (see R. 80–82).

for a writ of habeas corpus in the District Court for the Southern District of California, challenging the validity of the deportation order (R. 2–8). In response to an order to show cause (R. 10), respondent filed a return (R. 11–12), to which he attached, *inter alia*, the order and warrant for petitioner's deportation and a copy of the transcript of the hearings before the presiding inspector. The writ issued (R. 57), respondent filed a return to the writ (R. 58–59), a hearing was held, and thereafter the district court entered an order granting the petition and discharging petitioner from custody (R. 59). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the order of the district court was reversed (R. 83).

ARGUMENT

Petitioner contends that his involuntary and fortuitous landing in Cuba cannot be construed as a departure from the United States so as to render his subsequent landing at Miami a new "entry" within the meaning of Section 19 (a) of the Immigration Act of 1917;[2] and that the decision below rejecting this contention is in conflict with the recent decision of the Circuit Court of Appeals for the Second Circuit in *Di Pasquale*

[2] It is clearly established, as petitioner concedes (Pet. 10–11), that an entry within the meaning of Section 19 (a) of the Immigration Act of 1917 includes an arrival subsequent to the original one. See, e. g., *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425.

v. *Karnuth*, 158 F. 2d 878, where it was held that an unwitting passage of an alien through Canada, as a sleeping car passenger on a train from Buffalo, New York, to Detroit, Michigan, did not involve an entry into the United States.[4] We agree with the court below that petitioner's landing in Cuba and his subsequent arrival in Miami did constitute an entry for the purposes of Section 19 (a); and we think that the decision of the Second Circuit in the *Di Pasquale* case is not to the contrary.

The opinions in the *Di Pasquale* case and the present case do involve an element of conflict in principle, for the court below said that it is "immaterial," in considering whether an alien's return to this country constitutes an entry, "Whether or not the alien intended to land on the foreign soil or intended to return to the United States" (R. 79), whereas the Second Circuit said that there must be "knowledge by the alien that the route which he is to take will carry him across our borders" (158 F. 2d at 879). On the facts, however, there is no conflict between these two decisions. Di Pasquale's passage through Canada was completely unwitting on his part and the Second Circuit said that it would be unreasonable

[4] The *Di Pasquale* case was decided January 11, 1947; the case at bar on January 22. The court below apparently was not aware of the *Di Pasquale* decision, for it did not refer to it in its opinion.

to impose the burden upon an alien every time he set foot upon a public conveyance to inform himself of its projected journey. That is not the situation here. When, as in this case, an alien embarks on a ship which he knows is scheduled for a voyage from one coast of the United States to another, he can certainly reasonably foresee the possibility that due to change in orders, weather conditions, or other causes, the ship's course may be altered to bring it into a foreign port or place. Consequently, when, due to war conditions, the crew of the S. S. *Andrew Jackson* was forced to land at Cuba, it could not be said that the landing was completely unforeseeable or unwitting as was Di Pasquale's passage through Canada. Indeed, the Second Circuit's opinion in the *Di Pasquale* case recognizes the correctness of the conclusion later reached by the court below in the instant case. In distinguishing the Ninth Circuit's earlier decision in *Taguchi* v. *Carr*, 62 F. 2d 307, the case of the shipwrecked fisherman-alien who, after landing on an island of Mexico on instructions from his captain, was denied readmission and ordered deported upon his subsequent return to the United States, the Second Circuit said that although "it was a hard constraint that put him to the choice" of landing upon foreign soil, he nevertheless "did choose to re-enter and knew he was entering when he did"

(158 F. 2d at 879).[5] The *Taguchi* decision, which the Second Circuit thus approved, and which the court below also cited in support of its decision here (R. 79), is indistinguishable from the instant case. The decision below that on the basis alone of petitioner's involuntary and fortuitous landing in Cuba, his subsequent return to the United States constituted an entry within the meaning of Section 19 (a) is therefore not only consistent with, but is supported by the Second Circuit's opinion in the *Di Pasquale* case, as well as by the decisions of this Court discussed below.

But it is unnecessary to predicate the conclusion that petitioner made an entry into the United States in 1942 on the fact of the landing in Cuba. As shown in the Statement, *supra*, p. 3, the S. S. *Andrew Jackson* anchored outside of Panama City, Panama, during the course of its voyage to New York, and petitioner was granted shore leave at Panama City. His act in thus landing on foreign soil was plainly voluntary and intentional, and his subsequent arrival at Miami was likewise a voluntary and intentional coming to the United

[5] The Second Circuit considered that its *Di Pasquale* decision conflicted only with the First Circuit's decision in *Ward* v. *De Barros*, 75 F. 2d 34, where it was held, on facts similar to those in Di Pasquale's case, that the alien made an entry even though he was not aware that he had crossed our borders into Mexico during a trip by train from New York to California.

States from a foreign port or place. Hence, even under petitioner's construction of Section 19 (a) as requiring an intentional departure and return, there was an entry within the meaning of the statute. See *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425; *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129.

Indeed, even if petitioner had not voluntarily gone ashore at Panama City, Panama, his subsequent arrival at Miami, or an arrival at New York, the scheduled destination, would have constituted an entry within the meaning of the statute. Since, as petitioner knew, the S. S. *Andrew Jackson* was scheduled for an intercoastal voyage, he must have realized that it would have to pass through the Panama Canal. And the ship did in fact pass through the Canal. Section 1 of the Act, *supra*, p. 2, expressly defines the term "United States" as excluding the Panama Canal Zone and requires an alien coming from that place or any insular possession to qualify for entry under the same conditions as any other alien. Consequently, on the basis alone of the passage through the Panama Canal, a place which is the equivalent of foreign territory for the purposes of the statute, the instant case falls squarely within the decisions of this Court in *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and *United States ex rel. Stapf* v. *Corsi*,

supra. Thus, in the *Claussen* case, the facts upon which the decision turned were that the alien was a member of the crew of an American ship which sailed from New York to South America and returned by way of Cuba. There apparently was no evidence that the alien had actually landed in South America or Cuba and the decision was predicated solely on the facts as to the routing of the ship. 279 U. S. at 400–401; see also the opinion of the Second Circuit in the *Claussen* case, 16 F. 2d 15, 16; cf. the *Stapf* case, 287 U. S. at 130. In upholding the order for Claussen's deportation under Section 19 (a), this Court said (279 U. S. at 401):

> * * * a vessel outside the United States whether on the high seas or in foreign waters is not a place included within the United States as defined by the Act. See *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 122. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 127. The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country with-

> out having been in any foreign port or place. See §§ 19, 32, 33, 35.
>
> And it is clear that petitioner departed from the United States on the *Elisha Atkins* and that, when he landed at Boston on his return from South American and Cuban ports, he made an entry into the United States within the meaning of the Act.

See also *Stapf* v. *Corsi*, 287 U. S. at 133.*

It is clear, therefore, that without recourse to petitioner's landing in Cuba, the evidence showing that he landed at Panama City and that his ship passed through the Panama Canal supports the conclusion of the Immigration and Naturalization Service that he made an entry into the United States at Miami in 1942, and, hence, that he was deportable by reason of his subsequent conviction.

---

* While it is clear, as shown in the text, that an alien passing through the Panama Canal on an intercoastal voyage makes an entry when he arrives at the American terminus, it should not be assumed that such passage through the Canal bars his reentry into the United States. Both the immigration laws and regulations secure to aliens who have acquired a domicile here the right of reentry. See, e. g., 8 U. S. C. 136 (p); Immigration Regulations, 8 C. F. R., 1943 Cum. Supp., 132.1. Moreover, by regulation, the Immigration and Naturalization Service has waived the entry permit requirements for an alien on an intercoastal or coastwise voyage. See 8 C. F. R., 1943 Cum. Supp., 175.44 (d) and (e).

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
SHELDON E. BERNSTEIN,
Attorneys.

MAY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947